

REMARKS

Applicant intends this response to be a complete response to the Examiner's 31 November 2005 Final Office Action. Applicant has labeled the paragraphs in his response to correspond to the paragraph labeling in the Office Action for the convenience of the Examiner.

DETAILED ACTION

The Examiner stated as follows:

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on February 28, 2006 has been entered.

2. Claim 43 has been added.

3. Claims 1-43 are currently pending. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Applicant acknowledges these statements.

Election/Restrictions

The Examiner stated as follows:

4. The subsequent Office action was properly made final because there were no new grounds of rejection set forth.

5. Claims 1-7, 11, 14-38, 41, and 42 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention and species, there being no allowable generic or linking claim. Election was made without traverse in the reply filed on May 18, 2005.

6. Claims 8-10, 12, 13, 39-40 and 43 are examined on the merits solely in regards to the elected species.

Applicants acknowledge the finality of the election/restriction requirement and apologizes for any confusion. Applicants also acknowledge the withdrawn claims and the claims being examined on their merits.

Claim Objections

7. Claim 43 stands objected to because of the following informalities: there is no period at the end of the claims. Appropriate correction is required.

Applicants have amended the claim to address this issue and the new claim includes a period. Because this is not a narrowing amendment, no estoppel can attach.

Claim Rejections - 35 USC § 103

8. Claims 8-10 and 12 stand rejected under 35 U.S.C. 103(a) as being unpatentable over

Derwent English abstract of Chinese Pat. Appl. No. 1089152 A (1994) for the reasons set forth in the previous Office action.

The Examiner contends as follows:

All of applicant's arguments regarding this ground of rejection have been fully considered but are not persuasive. Applicant argues that the reference does not teach that onion is the active ingredient in the method of treating the common cold taught by the reference. However, applicant's claims are drawn to a composition comprising onion for treating the common cold. The reference teaches a composition comprising onion for treating the common cold. Thus, the reference teaches the claimed invention even if the reference does not specifically state that onion is the active ingredient.

In addition, applicant argues that the reference does not teach the claimed particle sizes. Claim 1 claims a large distribution of particle size, i.e. from 1 to 1400 microns. 1400 micron would be a large particle while 1 micron would be very small. It is reasonable to assume that most powdered or granulated compositions such as that taught by the reference would fall within this size limitation.

Applicant also argues that the reference does not teach the claimed water content or the effective amount. However, the amount of a specific ingredient in a composition is clearly a result effective parameter that a person of ordinary skill in the art would routinely optimize. "[W]here the general conditions of a claim are disclosed in the prior art, it is not inventive to discover the optimum or workable ranges by routine experimentation." *In re Aller*, 220 F.2d 454, 456, 105 USPQ 233, 235 (CCPA 1955). Thus, optimization of general conditions is a routine practice that would be obvious for a person of ordinary skill in the art to employ. It would have been customary for an artisan of ordinary skill to determine the optimal amount of each ingredient to add in order to best achieve the desired results. Thus, absent some demonstration of unexpected results from the claimed parameters, this optimization of ingredient amount would have been obvious at the time of applicant's invention. Furthermore, the water content would also be obvious to optimize because a person of ordinary skill in the art would recognize that a high water content would make the granules and powders stick together. Thus, the water content is also a parameter that is considered within the prevue of routine optimization.

Applicants have amended claim 8 to recite "a composition comprising greater than 95% of a particulate, dehydrated plant material." There is no disclosure, teaching or suggestion in CN'152 that a composition that is 95% of a particulate, dehydrated plant material would effective a treating the common cold. In fact, CN'152 can be read to require that the composition have only a small amount of a particulate, dehydrated plant material derived from a species of *Allium* selected from the group consisting of *Allium cepa*, *Allium ampeloprasum*, *Allium fistulosa*, and *Allium schoenoprasum* having particles ranging in size from about 1 to 1,400 microns and having a water content of less than or equal to 5.5% and where the effective amount is between 5 and 50 grams per day.

Because CN'152 does not disclose, teach or suggest a composition including 95% of a particulate, dehydrated plant material derived from a species of *Allium* selected from the group consisting of *Allium cepa*, *Allium ampeloprasum*, *Allium fistulosa*, and *Allium schoenoprasum* having particles ranging in size from about 1 to 1,400 microns and having a water content of less than or equal to 5.5% and where the effective amount is between 5 and 50 grams per day, CN'152 cannot render the present invention obvious. Applicants, therefore, respectfully request withdrawal of this section 103(a) rejection.

9. Claims 8-10, 12, 13, 39-40 and 43 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Derwent English abstract of Chinese Pat. Appl. No. 1089152 A (1994) in view of US Pat. No. 4,409,237 for the reasons set forth in the previous Office action.

The Examiner contends as follows:

All of applicant's arguments regarding this ground of rejection have been fully considered but are not persuasive. Applicant reiterates the argument that CN '152 does not teach that the onion is the active ingredient. However, as discussed above, applicant's claims are drawn to a composition comprising onion for treating the common cold. The reference teaches a composition comprising onion for treating the common cold. Thus, the reference teaches the claimed invention even if the reference does not specifically state that onion is the active ingredient. The entire composition of CN '152 is obvious to optimize in the manner described in US '237. Thus, a composition comprising onion for treating the common cold is optimized in a manner that would lead to applicant's claimed invention.

In regards the limitations regarding water content, please note that US '237 specifically teaches that dry powders are desirable (see the Examples, specifically 4 and 5). Thus, this reference shows that the moisture content of powdered compositions is a parameter to be varied during routine optimization.

As stated above, Applicants have amended claim 8 to requirement that the composition includes 95% of a particulate, dehydrated plant material derived from a species of *Allium* selected from the group consisting of *Allium cepa*, *Allium ampeloprasum*, *Allium fistulosa*, and *Allium schoenoprasum* having particles ranging in size from about 1 to 1,400 microns and having a water content of less than or equal to 5.5% and where the effective amount is between 5 and 50 grams per day. The combination of CN'152 and US'237 does not disclose, teach or suggest that a composition including 95% of a particulate, dehydrated plant material derived from a species of *Allium* selected from the group consisting of *Allium cepa*, *Allium ampeloprasum*, *Allium fistulosa*, and *Allium schoenoprasum* having particles ranging in size from about 1 to 1,400 microns and having a water content of less than or equal to 5.5% and where the effective amount is between 5 and 50 grams per day would be useful in treating a common cold. In fact, CN'152 would suggest that such as

composition alone would be ineffective based on the significant amount of other material including in the CN'152 composition.

Because the combination of CN'152 and US'237 does not disclose, teach or suggest a composition including 95% of a particulate, dehydrated plant material derived from a species of *Allium* selected from the group consisting of *Allium cepa*, *Allium ampeloprasum*, *Allium fistulosa*, and *Allium schoenoprasum* having particles ranging in size from about 1 to 1,400 microns and having a water content of less than or equal to 5.5% and where the effective amount is between 5 and 50 grams per day, the combination cannot render the present invention obvious. Applicants, therefore, respectfully request withdrawal of this section 103(a) rejection.

Having fully responded to the Examiner's Non-Final Office Action, Applicant respectfully urges that is application be passed onto allowance.

Applicants believe that the response will place the application in condition for allowance and therefore respectfully request that since a generic claims is in condition for allowance that all other species be brought back into claim 8 for examination on the merits.

If it would be of assistance in resolving any issues in this application, the Examiner is kindly invited to contact applicant's attorney Robert W. Strozier at 713.977.7000.

Respectfully submitted,



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Attorney for Applicants

Date: August 28, 2006